

Minutes
BOARD OF FIREFIGHTING PERSONNEL STANDARDS AND EDUCATION
MEETING

November 10, 2015 10 a.m.
Indiana Government Center South
Conference Room 5
302 W Washington St
Indianapolis IN 46204

A Meeting called to order 10 am

Present

Greg Wyant
Burke Jones
Rob Lund
Eric Dreiman
Eric Gentry
Chris Johnson
Genois Brabson
Robert Johnson (Asst. State Fire Marshal)
Joe Romero
John Smith

Absent

Tom Hanify

Legal Counsel Brad Gavin was present

B. Review of Administrative Cause No. 14-26-BFPSE, John Cline, Non- Final Order.

A history of the progression of this issue:

- Administrative Cause #14-26-BFPSE
- November 6, 2014 Board convened and revoked all of John Cline's firefighter certifications per IAC 655-1-1-7(b) (2)
- November 12, 2014 Appeal was filed with ALJ
- November 17, 2014 ALJ set a stay hearing for December 4, 2014
- December 11, 2014 ALJ issued a stay order
- January 21, 2015 Board granted the petition for administrative review
- February 11, 2015 a Prehearing conference was held
- April 15, 2015 Respondent filed their brief
- May 15, 2015 the petitioner filed his brief
- July 17, 2015 ALJ issued his Notice of Non-Final Order
- September 28, 2015 Board met in Kokomo and voted to review the Non-Final order and requested the submission of briefs
- September 30, 2015-Parties were notified that the Board was going to review certain issues in the Non-final Order and requested the submission of briefs regarding these issues

- October 30, 2015 Respondent (represented by Pamela Walters) filed brief
- November 2, 2015 Petitioner (represented by Matthew Langenbacher) filed brief

The Board discussed its option with respect to the Non-final Order, which included affirming the Order, modifying the Order, remanding the case with instruction to the ALJ, and dissolving the order.

The Board discussed the issues identified in the Board's September 30, 2015 letter and the information provided in Respondent and Petitioner briefs responding to the letter:

1. Whether the term "offense," as it is used in 655 IAC 1-1-7, is specifically limited to arson and/or child molestation
The Board members were in agreement, and the parties concluded as such in their briefs, that the term offense as used in 655 IAC 1-1-7 was not limited to arson and child molestation. .
2. Whether "child molestation" and "child exploitation" are offenses that are similar enough to meet the spirit of the Board's rule, thus warranting limited discussion on the topic
The Petitioner's and Respondent's briefs disagreed on this issue. The members of the Board generally agreed that the statutory elements of the crime of child exploitation were similar enough to the statutory elements of the crime of child molestation
3. Whether the revocation of a firefighter certification is a "punishment" or simply a consequence of a change in status for someone convicted of a felony.
Petitioner's and Respondent's briefs disagreed on this issue. The members of the Board generally agreed that their action was not a punishment.
4. Whether the revocation of fire certifications, by itself, would cause the Petitioner to lose certain property rights (i.e. employment) or whether the fire department where Petitioner is employed can waive the requirement for certifications.
Petitioner's and Respondent's briefs disagreed on this issue. The members of the Board generally agreed that their action regarding Cline's certifications did not deprive him of property rights.
5. Whether the Board violated the Ex Post Facto clauses of the U.S. and/or Indiana Constitutions by applying the 2009 version of 655 IAC 1-1-7 for a conviction that occurred in 2001, but for an offense that continued until 2011 as the Petitioner remained on the Sex Offender Registry until 2011.
The Respondent's brief referred to the Non-final Order, while the Petitioner's brief concluded that it was an ex post facto violation.

The Board members discussed this issue. The Board acted when it became aware of the convictions—firefighters do not have an obligation to notify the Board, unlike emergency medical services certifications and licenses.

The Chair requested legal advice on this issue. The Board's legal counsel indicated that he was not prepared to provide legal advice on the issue at the meeting, but legal guidance on the issue could be provided at a later date.

The consensus of the Board members was that revocation of Cline's certifications was the correct action.

Chris Johnson made a motion to modify the Administrative Law Judge's Non-final Order based on discussion of the 5 issues. John Smith seconded. Motion adopted by the Board.

The Board then evaluated the Administrative Law Judge's Non-final Order to tentatively determine the provisions that needed to be revised. These tentative revisions were:

1. On page 1, in the first paragraph, delete and/or modify the last sentence.
2. On Page 8-9, under the Conclusions of Law, Paragraph 1, strike the second paragraph.
3. Keep Paragraph's 2, 3, and 4.
4. Strike Paragraph 5
5. Strike Paragraph 6
6. Strike Paragraph 7
7. Modify Paragraph 8
8. Strike Paragraph 9
9. Keep Paragraph 10
10. Strike Paragraph 11
11. Strike Paragraph 12
12. In Paragraph 13, keep the first paragraph and strike the second paragraph.
13. Strike Paragraph 14
14. Paragraph's 15-33 address the ex post factor argument. The Board generally did not believe that it was applicable but would like advice from Board Legal Counsel on the issue.

Joe Romero made a motion to assign Chris Johnson to modify the document to work with Board Legal Counsel for review. Genoio Brabson seconded.

Board Legal Counsel was asked if the revised document would be ready for review at the Nov 23 meeting. The Board Legal Counsel could not commit to making that deadline.

Meeting adjourned 11:04 a.m.

NEXT MEETING:

Nov 23, 2015 6 p.m.

Huntingburg City Hall

508 E Fourth St

Huntingburg IN 47542

812-683-4143